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21 UNITED STATES DISTRICT COURT
22 NORTHERN DISTRICT OF CALIFORNIA
23 SAN FRANCISCO DIVISION

24 ORACLE AMERICA, INC.
25 Plaintiff,
26 v.
27 GOOGLE INC.
28 Defendant.

Case No. CV 10-03561 WHA
ORACLE'S RESPONSE TO ECF NO. 1531
Dept.: Courtroom 8, 19th Floor
Judge: Honorable William H. Alsup

1 Oracle hereby responds to the Court's Request for Further Response Re Social Media
2 (ECF No. 1531) as follows:

3 **Question 1:** Do references to the "general public" include individuals who are logged in
4 to a particular site or application although not connected to a prospective juror? That is, a member
5 of the general public who does not have a Twitter account could not view the followers or the
6 followed list of a prospective juror's account, even if that juror's profile is public. An individual
7 who is logged into his Twitter account, however, could view those lists, even without connecting
8 to the prospective juror. Do you contemplate conducting searches and viewing prospective jurors'
9 profiles with logged in users?

10 **Oracle's Response:** Yes, the general public includes individuals logged in to a particular
11 site or application. Oracle does not contemplate having sufficient time to review social media
12 profiles of the venire with logged in users during the time allotted for voir dire and does not
13 intend to. Oracle does submit that passive review of information via logged in users is
14 permissible under applicable ethical guidelines and judicial precedent. After the jury is seated,
15 the parties are entitled to conduct passive review to ensure that the jurors are complying with the
16 Court's orders not to discuss the case. *See* ECF 1529 at 3:4-4:13; 6:1-12. The phenomenon of
17 jurors using social media to discuss cases in progress is a significant and serious one, and the
18 parties should not be required to forfeit their right to monitor for this potential.

19 **Question 2:** Oracle refers to "information that is available under the user's privacy
20 settings." Who is the "user" in that circumstance?

21 **Oracle's Response:** The "user" referred to in Oracle's statement is the juror or the
22 prospective juror.

23 **Question 3:** Oracle states that neither side should be permitted "to review Google,
24 Yahoo!, and/or other Internet searches." Please state how you intend to discover prospective
25 jurors' social media profiles without reviewing "Internet searches."

26 **Oracle's Response:** Oracle's reference to "Google, Yahoo!, and/or other Internet
27 searches" at lines 9-10 of page 2 of Oracle's March 8, 2016 submission (ECF No. 1529) was in
28 response to the Court's question of whether "either side is allowed to review Google, Yahoo!,

1 and/or other Internet searches conducted by prospective or actual jury members in order, for
2 example, to analyze their politics, job searches, shopping habits, evening life, and/or personal
3 interests;” Oracle’s statement was focused on the potential that Google (not Oracle) would review
4 private search history information that Google might have access to by virtue of its services. As
5 noted in its prior submission, Oracle does not view such search history information as public
6 information.

7 **Question 4:** Please state whether you intend to use dating sites or applications in
8 investigation prospective jurors.

9 **Oracle’s Response:** No.

10 **Question 5:** Please state whether you intend to use technical search tools such as “reverse
11 whois” or to review materials that a prospective juror may not have realized could be accessed by
12 the public, such as source code for a website.

13 **Oracle’s Response:** No.

14 **Oracle’s Response to Google’s Submission:** Oracle joins in Google’s request for an
15 hour of voir dire time per side (which Oracle understands is in addition to the Court’s voir dire).
16

17 Dated: March 9, 2016

ORRICK, HERRINGTON & SUTCLIFFE
LLP

19 By: /s/ Peter A. Bicks
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